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No. 14-1055

In the Supreme Court of the United States

CRYSTAL MONIQUE LIGHTFOOT, ET AL., PETITIONERS

v.

CENDANT MORTGAGE CORPORATION, DBA PHH MORTGAGE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

EDWIN S. KNEEDLER
Deputy Solicitor General
Counsel of Record
BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
ANN O'CONNELL
Assistant to the Solicitor General
MARK B. STERN
ABBY C. WRIGHT
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the charter of the Federal National Mortgage Association (Fannie Mae), which authorizes Fannie Mae to sue and be sued "in any court of competent jurisdiction, State or Federal," 12 U.S.C. 1723a(a), confers original jurisdiction on federal courts over all cases to which Fannie Mae is a party.

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INTEREST OF THE UNITED STATES

This case presents the question whether the charter of the Federal National Mortgage Association (Fannie Mae), which authorizes Fannie Mae to sue and be sued "in any court of competent jurisdiction, State or Federal," 12 U.S.C. 1723a(a), vests federal courts with original jurisdiction over all cases to which Fannie Mae is a party. Nearly identical language appears in the sue-and-be-sued clauses of the Department of Housing and Urban Development, 12 U.S.C. 1702, and the Department of Veterans Affairs, 38 U.S.C. 3720. Although those agencies are authorized by statute to bring suit in federal court, see 28 U.S.C. 1345, and to remove suits filed in state court, see 28 U.S.C. 1442(a), resolution of the question presented would determine whether private litigants may file

suit against those agencies in federal court based on state-law causes of action. Accordingly, the United States has a substantial interest in the question whether Fannie Mae's charter provides an independent grant of jurisdiction to the federal courts. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

STATEMENT

1. In 1934, in the midst of the Great Depression, Congress enacted the National Housing Act, ch. 847, 48 Stat. 1246 (12 U.S.C. 1701 *et seq.*), to help resuscitate the nation's housing market and protect lenders from mortgage default. That law created the Federal Housing Administration (FHA), which is now part of the Department of Housing and Urban Development (HUD). The following year, concerns over whether banks could bring suit against FHA led Congress to enact a provision authorizing FHA (and now HUD) "to sue and be sued in any court of competent jurisdiction, State or Federal." Banking Act of 1935, ch. 614, Tit. III, § 344(a), 49 Stat. 722 (12 U.S.C. 1702); see *Korman* v. *Federal Hous. Adm'r*, 113 F.2d 743, 746 & n.15 (D.C. Cir. 1940).

The National Housing Act also contemplated that FHA would establish independent "national mortgage associations" that would enter the secondary-mortgage market. § 301(a), 48 Stat. 1252. The associations were designed to "promote access to mortgage credit throughout the Nation." 12 U.S.C. 1716(4). The National Housing Act authorized such associations "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." § 301(c)(3), 48 Stat. 1253.

The Federal National Mortgage Association (Fannie Mae) was chartered by FHA in 1938 as a national

mortgage corporation owned entirely by the federal government. Fed. Nat'l Mortg. Ass'n, *Circular No. 1*, at 1 (Apr. 15, 1938); HUD, *Background and History of the Federal National Mortgage Association* 7-9, A4 (Jan. 31, 1966). As provided in Section 301(c)(3) of the National Housing Act, Fannie Mae then had the power "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." See also Act of July 1, 1948, ch. 784, § 1, 62 Stat. 1206 (amending Title III of the National Housing Act regarding Fannie Mae). In 1954, Congress converted Fannie Mae into a mixed-ownership corporation, meaning that the federal government held its preferred stock and private investors held its common stock. Housing Act of 1954, ch. 649, Tit. II, § 201 [§ 303], 68 Stat. 613; see Pet. App. 34a. Congress also revised the statement of Fannie Mae's general powers, providing, *inter alia*, that Fannie Mae could sue and be sued "in any court *of competent jurisdiction*, State or Federal." Housing Act of 1954, § 201 [§ 309(a)], 68 Stat. 620 (emphasis added). That change rendered the language in Fannie Mae's charter identical to the language that applied to FHA. Compare 12 U.S.C. 1723a(a) (Fannie Mae), with 12 U.S.C. 1702 (FHA).

In 1968, Congress split Fannie Mae into two separate corporations: Fannie Mae and the Government National Mortgage Association (Ginnie Mae). See Housing and Urban Development Act of 1968 (1968 Act), Pub. L. No. 90-448, Tit. VIII, 82 Stat. 536. Fannie Mae, which was converted into a privately held corporation, purchases conventional mortgages. Ginnie Mae, which is wholly owned by the government and housed within HUD, guaranties the timely payment of principal and interest on mortgage-backed

securities that are secured by pools of government home loans. Ginnie Mae's sue-and-be-sued clause is the same as Fannie Mae's. See 12 U.S.C. 1723a(a).

Before 1974, both Fannie Mae and Ginnie Mae were required to "maintain [their] principal office[s] in the District of Columbia" and were "deemed, for purposes of venue in civil actions, to be * * * resident[s] thereof." 1968 Act § 802(c)(3)(A) and (B), 82 Stat. 536-537. In 1974, Congress enacted new language that required Fannie Mae to maintain its principal office in the District of Columbia "or the metropolitan area thereof" and provided that Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." Housing and Community Development Act of 1974, Pub. L. No. 93-383, Tit. VIII, § 806(b), 88 Stat. 727 (12 U.S.C. 1717(a)(2)(B)).

2. a. In July 2002, following foreclosure on their home, petitioners filed suit in state court against respondents Cendant Mortgage Corporation (which had financed the mortgage), Fannie Mae (which had purchased the loan but then sold it back to Cendant), Attorneys Equity National Corporation (which had become trustee for the property), and Robert Matthews (the current property owner). Fannie Mae removed the case to the United States District Court for the Central District of California on the basis of its sue-and-be-sued clause, Pet. App. 45a-49a, and petitioners unsuccessfully sought a remand to state court, *id.* at 43a-44a. Petitioners appealed, but the Ninth Circuit noted that "the order challenged in the appeal is not final or appealable." 02-56586 Order (Oct. 11, 2002).

In February 2003, the district court dismissed the suit as to Cendant, Fannie Mae, and Matthews—but not as to Attorneys Equity—on the basis of res judicata because petitioners had already filed two suits unsuccessfully challenging the foreclosure. D. Ct. Doc. 59 (Feb. 20, 2003).[1] Petitioners appealed, but the Ninth Circuit dismissed the appeal "because the order challenged in the appeal is not final or appealable." 03-55389 Order (Apr. 11, 2003).

In the district court, petitioners moved unsuccessfully for a default judgment against Attorneys Equity and to set aside the judgment as to Cendant, Fannie Mae, and Matthews. D. Ct. Doc. 78, 79 (Aug. 29, 2003). Petitioners appealed, and the Ninth Circuit summarily affirmed the district court's judgment without receiving a response brief and without discussing whether the judgment being appealed was final. 03-56580 Mem. (Dec. 15, 2003). Petitioners filed a petition for a writ of certiorari, which this Court denied. *Hollis-Arrington* v. *Cendant Mortg. Corp.*, 543 U.S. 918 (2004) (No. 03-10177).

b. After filing an unsuccessful mandamus petition in the court of appeals, see 08-73461 Order (Nov. 3, 2008), petitioners returned to the district court. Petitioners moved for entry of a final judgment under Federal Rule of Civil Procedure 54, noting that the court had not previously issued a final judgment that included Attorneys Equity. D. Ct. Doc. 92 (Apr. 7, 2009). An attorney who had formerly represented Attorneys Equity explained that the corporation had become defunct. D. Ct. Doc. 97, at 2 (May 18, 2009).

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[1] All district court docket references are to Case No. 02-cv-6568 (filed Aug. 22, 2002).

In October 2009, the district court entered judgment in favor of Cendant, Fannie Mae, and Matthews on the basis of its prior order granting their motions to dismiss; the court did not enter judgment with respect to Attorneys Equity. D. Ct. Doc. 99 (Oct. 21, 2009). Petitioners filed another mandamus petition in the Ninth Circuit, asking the court of appeals to direct the district court to enter judgment with respect to Attorneys Equity. The Ninth Circuit denied the petition without prejudice to the filing of a new petition if the district court did not enter a final judgment with respect to Attorneys Equity within 60 days. 09-74079 Order (Apr. 14, 2010).

c. In June 2010, the district court issued an order dismissing the action with prejudice against Attorneys Equity on the basis of res judicata. D. Ct. Doc. 103, 104 (June 11, 2010). That same day, petitioners moved under Federal Rule of Civil Procedure 60(b) to set aside the judgments—which by now had been granted in favor of all defendants—based on allegations of "fraud upon the court." D. Ct. Doc. 105, at 1. The district court denied the motion, finding it untimely as to Cendant, Fannie Mae, and Matthews, and without merit as to all defendants. D. Ct. Doc. 117 (Sept. 27, 2010).

On appeal, the Ninth Circuit summarily affirmed the district court's judgment dismissing petitioners' action and denying their Rule 60(b) motion. 465 Fed. Appx. 668. Petitioners sought rehearing, and in April 2012 the court of appeals *sua sponte* withdrew its prior opinion and denied the rehearing petition as moot. The court requested briefing on the question "whether the district court had subject matter jurisdiction on the basis of the federal charter of the Fed-

eral National Mortgage Association." 10-56068 Order (Apr. 13, 2012).

3. a. A divided panel of the Ninth Circuit affirmed the district court's judgment. Pet. App. 3a-40a.

The court of appeals held that Fannie Mae's charter "confers federal question jurisdiction over claims brought by or against Fannie Mae." Pet. App. 5a. The court relied primarily on this Court's decision in *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992) (*Red Cross*), which addressed a similar question with respect to the Red Cross's sue-and-be-sued clause. That clause authorizes suit by or against the Red Cross "in courts of law and equity, State or Federal, within the jurisdiction of the United States." 36 U.S.C. 2 (1988). Drawing on its prior opinions stretching back to 1809, the Court concluded in *Red Cross* that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." 505 U.S. at 255. The court of appeals concluded that, under *Red Cross*, Fannie Mae's sue-and-be-sued clause, which also mentions the federal courts, similarly provides an independent basis for federal jurisdiction. Pet. App. 8a.

Petitioners argued that a different result was warranted because Fannie Mae's sue-and-be-sued clause, unlike that of the Red Cross, refers to "any *court of competent jurisdiction*, State or Federal." 12 U.S.C. 1723a(a) (emphasis added). The court of appeals rejected that contention. The court noted that the italicized phrase was added in 1954 to replace the phrase "court of law or equity," and it found no indication in the legislative history that Congress had intended for that amendment to strip federal jurisdiction over suits

by or against Fannie Mae. Pet. App. 8a-11a. The court stated that, "[g]iven the important practical effect of eliminating federal question jurisdiction under Fannie Mae's sue-and-be-sued clause, we should expect the House or Senate to have said something if they intended a change of that sort." *Id.* at 10a.

In the court of appeals' view, "the most likely explanation for replacing the phrase 'court of law or equity' with 'court of competent jurisdiction' is that Congress was * * * modernizing Fannie Mae's charter" by eliminating the antiquated reference to "court of law or equity." Pet. App. 10a. The court noted that in 1948, in response to the elimination of the law/equity distinction from the Federal Rules of Civil Procedure, "Congress removed a number of references to 'law or equity' in the statutes defining federal district court jurisdiction." *Ibid.*

The court of appeals further noted that in 1954 (the year Congress amended Fannie Mae's charter), Congress had eliminated federal jurisdiction for the Federal Savings and Loan Insurance Corporation (FSLIC) by deleting language in its charter that had authorized suit "in any court of law or equity, State or Federal" and replacing it with language authorizing suit "in any court of competent jurisdiction in the United States." Pet. App. 12a (citations omitted). The court reasoned that, "[s]ince eliminating the reference to federal courts in the FSLIC amendment eliminated federal question jurisdiction over FSLIC suits brought under its sue-and-be-sued clause, Congress had no reason also to insert the phrase 'court of competent jurisdiction' to accomplish the same thing." *Ibid.*

The court of appeals rejected the argument that its holding "render[ed] superfluous the phrase 'court of

competent jurisdiction.'" Pet. App. 12a. The court explained that, in the 1950s, there was a general concern "about the extent of federal authority to require state courts to hear cases brought pursuant to federal statutes." *Id.* at 13a (citing *Testa* v. *Katt*, 330 U.S. 386 (1947)). The court reasoned that adding the phrase "court of competent jurisdiction" "emphasize[d] that the clause did not authorize or require the exercise of subject matter jurisdiction by a state court with narrow, specialized jurisdiction" (such as a family court or small-claims court), or by a federal court of specialized jurisdiction (such as a bankruptcy court). *Id.* at 12a-13a. Having concluded that Fannie Mae's charter "confers federal question jurisdiction over suits in which Fannie Mae is a party," the court of appeals affirmed the district court's dismissal of petitioners' claims "for the reasons stated in [its] previous unpublished disposition" and denied relief under Rule 60(b). *Id.* at 21a.

b. Judge Stein dissented. Pet. App. 21a-40a. He explained that, unlike the Red Cross's charter, Fannie Mae's sue-and-be-sued clause "contains a proviso—the phrase 'of competent jurisdiction.'" *Id.* at 22a. In Judge Stein's view, the majority's constructions of that phrase "effectively render[] the proviso superfluous." *Ibid.* He concluded that, "[w]ith the proviso included, Fannie Mae's sue-and-be-sued clause does not confer automatic federal subject matter jurisdiction over any action to which Fannie Mae is a party; jurisdiction must arise from some other source." *Ibid.*

Judge Stein explained that the Court in *Red Cross* had adopted a "default rule" that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it spe-

cifically mentions the federal courts." Pet. App. 24a (quoting *Red Cross*, 505 U.S. at 255). He observed that, because it is a default rule, Congress can draft exceptions to it. *Id.* at 25a. Judge Stein explained that, "[o]n its face, the phrase 'of competent jurisdiction' 'looks to outside sources of jurisdictional authority.'" *Id.* at 26a (brackets omitted) (quoting *Califano* v. *Sanders*, 430 U.S. 99, 106 n.6 (1977)). He concluded that "[n]o court—state or federal—is competent to hear a suit involving Fannie Mae unless it has subject matter jurisdiction by some means other than Fannie Mae's sue-and-be-sued clause." *Ibid.*

Judge Stein found the majority's explanation for the phrase "court of competent jurisdiction"—that it was added to modernize the United States Code by eliminating antiquated references to courts of law and equity—unpersuasive. He noted that where Congress had eliminated such references in other provisions of the United States Code, it had simply deleted the language, whereas in Fannie Mae's charter, Congress had replaced it with "court of competent jurisdiction." Pet. App. 29a & n.3. Judge Stein was also unpersuaded by the majority's view that Congress had amended the statute to emphasize that state and federal courts of specialized jurisdiction need not hear cases involving Fannie Mae on the basis of its sue-and-be-sued clause. *Id.* at 30a. In his view, even if that phrase had been omitted, the sue-and-be-sued clause would not reasonably have been construed to authorize private plaintiffs to sue Fannie Mae in state or federal courts of specialized jurisdiction. *Id.* at 31a (citing *Red Cross*, 505 U.S. at 256 n.8).

Judge Stein also observed that, although the legislative history did not specifically explain the purpose

of the 1954 amendment, "the non-jurisdictional reading of the 1954 [amendment] meshes comfortably with Congress' overall intention when enacting the Housing Act of 1954," which was "to put Fannie Mae on a path that would eventually take the federal government out of the secondary mortgage market." Pet. App. 35a-36a. He explained that, "[a]s part of this process, Congress removed Fannie Mae's jurisdiction-granting sue-and-be-sued clause and elected the default option for federally chartered corporations —that they do not automatically gain access to the federal courts, unless the government owns more than half of the corporation's capital stock." *Id.* at 36a; see 28 U.S.C. 1349. Judge Stein also pointed to the 1974 amendment to Fannie Mae's charter, which directs that Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." Pet. App. 38a (emphasis omitted) (quoting 12 U.S.C. 1717(a)(2)(B)). He reasoned that, if Congress had intended for Fannie Mae's charter to confer federal jurisdiction in all suits, there would have been no need to give Fannie Mae D.C. citizenship for purposes of diversity jurisdiction. *Id.* at 38a-39a.

SUMMARY OF ARGUMENT

A. Fannie Mae's charter does not vest federal courts with original jurisdiction over all cases to which Fannie Mae is a party. This Court has long recognized that Congress may use a federally chartered entity's sue-and-be-sued clause to create federal jurisdiction. In *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992), Congress synthesized its decisions on this subject into the following principle: "[A] congressional charter's 'sue and be sued' provision

may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.* at 255. The Red Cross's charter, which the Court held was sufficient to confer federal jurisdiction, authorized that entity "to sue and be sued in courts of law and equity, State or federal, within the jurisdiction of the United States." *Id.* at 248 (citation omitted). Although Fannie Mae's charter mentions the federal courts, it differs in a critical respect from the language at issue in *Red Cross* because it limits its authorization to courts "of competent jurisdiction."

The natural meaning of that phrase suggests that the charter authorizes Fannie Mae to sue or be sued in any court for which some *other* jurisdictional basis exists. That conclusion is reinforced by Congress's addition in 1974 of a provision specifying that Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." 12 U.S.C. 1717(a)(2)(B). That provision is most naturally read to refer to both personal and subject-matter jurisdiction, and Congress would have had no reason to specify Fannie Mae's corporate citizenship for purposes of diversity jurisdiction if Fannie Mae already had plenary access to the federal courts.

B. 1. Relying primarily on *Red Cross*, the court of appeals concluded that Fannie Mae's charter confers federal jurisdiction because it contains the word "federal." The Court in *Red Cross* did not treat the mention of federal courts as dispositive, however, but instead compared the Red Cross's charter to other sue-and-be-sued clauses that the Court had previously evaluated. Fannie Mae's charter differs significantly from those clauses because it authorizes suit only in courts "of competent jurisdiction."

The 1954 amendment to Fannie Mae's sue-and-be-sued clause was part of a larger statute that transformed Fannie Mae's relationship to the federal government by converting it to a mixed-ownership corporation and providing for the eventual substitution of private capital for government investment. By adding the phrase "of competent jurisdiction" to Fannie Mae's sue-and-be-sued clause, Congress ensured that suits by and against Fannie Mae could continue to be filed in federal court pursuant to 28 U.S.C. 1349, but only so long as the government's ownership of Fannie Mae's stock continued to exceed one-half. Once majority ownership passed to private hands, suits involving Fannie Mae could be brought in federal court only if some independent ground of federal jurisdiction existed.

The court of appeals believed that Congress most likely amended Fannie Mae's charter to modernize it by eliminating outdated reference to courts of law and equity. Although that might explain why Congress removed those references, it does not explain why Congress added the phrase "court of competent jurisdiction." Nor does Congress's different treatment of the FSLIC's sue-and-be-sued clause—adding the phrase "court of competent jurisdiction" *and* removing the reference to federal courts—compel respondents' reading of Fannie Mae's charter. Whatever the reason for the different amendments, Congress's use of two different mechanisms to eliminate federal jurisdiction from the FSLIC's sue-and-be-sued clause is not a reason to ignore the addition of the phrase "court of competent jurisdiction" to Fannie Mae's charter.

2. Contrary to respondents' argument, petitioners' reading of Fannie Mae's charter does not conflict with the Court's decision in *Breuer* v. *Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003). The Court in that case had no occasion to decide whether 29 U.S.C. 216(b), which provides that a suit under the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.*, "may be maintained against any employer * * * in any Federal or State court of competent jurisdiction," vested the district courts with original jurisdiction over such suits, and the Court did not discuss its distinct line of precedents addressing sue-and-be-sued clauses. Nor do the two pre-1954 court of appeals decisions cited by respondents specifically address whether the sue-and-be-sued clause at issue there (for suits against the Federal Housing Administrator) provided district courts with subject-matter jurisdiction.

Respondents also suggest that the phrase "court of competent jurisdiction" in Fannie Mae's charter refers to personal jurisdiction. Although that phrase may reinforce the natural inference that the court in a suit involving Fannie Mae must identify some independent ground for exercising personal jurisdiction over the defendant, there is no basis for construing the phrase to refer *only* to personal jurisdiction. Respondents are likewise wrong in arguing that the different level of access to federal courts given to Freddie Mac creates an anomaly. Quite apart from the differences between the two entities' sue-and-be-sued clauses, Congress has enacted additional provisions whose practical effect is to confer federal jurisdiction over all suits involving Freddie Mac without enacting comparable statutory provisions with respect to Fannie Mae.

ARGUMENT

Fannie Mae is authorized to sue or be sued "in any court of competent jurisdiction, State or Federal." 12 U.S.C. 1723a(a). Within that provision, the phrase "court of competent jurisdiction" is properly construed to refer only to courts for which some *independent* grant of subject-matter jurisdiction exists.

A. Fannie Mae's Charter Does Not Provide District Courts With Original Jurisdiction Of Suits Brought By Or Against Fannie Mae

1. a. Congress has given the federal district courts original jurisdiction of suits brought by federal agencies, 28 U.S.C. 1345, and has authorized federal agencies to remove to federal court suits that are filed in state court, 28 U.S.C. 1442(a)(1). Congress has further provided that certain federally created entities, such as the Federal Home Loan Mortgage Corporation (Freddie Mac), shall be deemed to be federal agencies for jurisdictional and removal purposes. 12 U.S.C. 1452(f). Pursuant to such provisions, many federally created entities may insist that suits brought by or against themselves will be adjudicated in federal court, even when those suits assert state rather than federal causes of action.

In the *Pacific Railroad Removal Cases*, 115 U.S. 1 (1885), this Court held that Congress's grant of jurisdiction to district courts in suits "arising under" federal law encompassed all suits by or against federally chartered entities. *Id.* at 11. Such entities were therefore entitled to file a suit in, or to remove a state-court suit to, federal court on the theory that the suit arose under the laws of the United States. In 1925, however, Congress limited the scope of that "arising under" jurisdiction by providing that district courts

would not "have jurisdiction of any [civil] action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, * * * [unless] the United States is the owner of more than one-half of its capital stock." Act of Feb. 13, 1925, ch. 229, § 12, 43 Stat. 941 (28 U.S.C. 1349).

Congress has not authorized Fannie Mae to invoke Section 1345 to bring suit in federal court or Section 1442 to remove suits filed against it in state court. Fannie Mae's status as a federally chartered entity likewise does not provide an independent ground for federal jurisdiction because the government does not own more than one-half of Fannie Mae's capital stock. See 28 U.S.C. 1349. Federal jurisdiction in this suit, which raises only state-law claims and which Fannie Mae removed to federal court on the basis of the sue-and-be-sued clause in its charter, Pet. App. 45a-49a, therefore turns on whether Fannie Mae's charter provides an independent source of federal jurisdiction.

b. This Court has long recognized that Congress may use a federally chartered entity's sue-and-be-sued clause to create federal jurisdiction. In *Osborn* v. *Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), the Court held that a clause allowing the Bank of the United States to sue and be sued "in all State Courts having competent jurisdiction, and in any Circuit Court of the United States," conferred federal jurisdiction. *Id.* at 817. In *Bankers Trust Co.* v. *Texas & Pacific Railway Co.*, 241 U.S. 295 (1916), by contrast, the Court held that a federal charter permitting a railroad to sue and be sued "in all courts of law and equity within the United States" did not confer federal jurisdiction because it did not specifically mention the federal courts. *Id.* at 303-305 (citation

omitted). And in *D'Oench, Duhme & Co.* v. *Federal Deposit Insurance Corp.*, 315 U.S. 447 (1942), the Court recognized jurisdiction based on an authorization to sue or be sued "in any court of law or equity, State or Federal." *Id.* at 455 (citation omitted).

In *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992), the Court synthesized those decisions and others to arrive at the following principle: "[A] congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.* at 255. At issue in *Red Cross* was a clause that authorized the Red Cross "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." *Id.* at 248 (quoting Act of Jan. 5, 1905, ch. 23, § 2, 33 Stat. 600 (as amended at 36 U.S.C. 2 (1988))). Because the Red Cross's charter "authoriz[ed] the organization to sue and be sued in federal courts, using language resulting in a 'sue and be sued' provision in all relevant respects identical to" the provision found to confer federal jurisdiction in *D'Oench, Duhme*, the Court held that the charter "suffice[d] to confer federal jurisdiction." *Id.* at 257.

2. a. Fannie Mae's charter authorizes it to sue and be sued "in any court of competent jurisdiction, State or Federal." 12 U.S.C. 1723a(a). Although it mentions the federal courts, that provision differs in a critical respect from the language at issue in *Red Cross* by limiting its authorization to courts "of competent jurisdiction." That phrase suggests that the charter does not provide an independent basis for federal (or state) jurisdiction, but simply authorizes Fannie Mae to sue or be sued in any court for which some *other* jurisdictional basis exists. Cf. *Califano* v. *Sand-*

ers, 430 U.S. 99, 106 n.6 (1977) (explaining that 5 U.S.C. 703, which authorizes judicial review "in a court specified by statute" or "in a court of competent jurisdiction," does not appear to function "as an independent jurisdictional foundation," since "[b]oth of these clauses seem to look to outside sources of jurisdictional authority"); *Ex parte Phenix Ins. Co.*, 118 U.S. 610, 617 (1886). To construe Fannie Mae's charter more expansively would deprive the phrase "of competent jurisdiction" of its most natural meaning.

The court of appeals reasoned that the phrase "of competent jurisdiction" would not become superfluous under its interpretation because the phrase can be read as "emphasiz[ing] that the [sue-and-be-sued] clause did not authorize or require the exercise of subject matter jurisdiction by a state court with narrow, specialized jurisdiction." Pet. App. 12a-13a. In the court's view, the phrase makes clear that state courts of specialized jurisdiction (such as family courts and small-claims courts) and specialized federal courts (such as bankruptcy courts) "need not entertain suits that do not satisfy those courts' jurisdictional requirements." *Id.* at 13a-14a. That analysis is unpersuasive.

The court of appeals' explanation for the relevant language assumes that a sue-and-be-sued clause *without* the phrase "of competent jurisdiction" could plausibly be read to create jurisdiction in specialized state or federal courts. As explained above, however, the phrase "of competent jurisdiction" does not appear in the charters of the Red Cross or a number of other federally created entities. The Court in *Red Cross* did not suggest, and it is farfetched to suppose, that suits by or against such entities can be brought in specialized state or federal courts without regard to the

jurisdictional prerequisites that would otherwise apply. See 505 U.S. at 256 n.8; Pet. App. 31a (Stein, J., dissenting).[2]

To be sure, statutory language may serve a useful purpose even if it simply confirms what would in any event be the most natural reading of the relevant law. But the court below identified no textually plausible reading of the phrase "court of competent jurisdiction" that would exclude specialized state or federal courts while allowing state-law suits like this one to be brought in (or removed to) federal district court. To the extent that the phrase "of competent jurisdiction" serves to eliminate any possible inference that suits involving Fannie Mae may be filed in a state family court, it does so by making clear that Fannie Mae may

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[2] For its contrary conclusion, the court of appeals relied on *Testa* v. *Katt*, 330 U.S. 386 (1947). See Pet. App. 13a-14a. The Court in *Testa* addressed whether Rhode Island's state courts had permissibly declined to entertain a private suit under the federal Emergency Price Control Act of 1942, ch. 26, 56 Stat. 23, which gave state and federal courts concurrent jurisdiction over such suits and authorized certain private parties to sue "in any court of competent jurisdiction." 330 U.S. at 387 & n.1. Noting that "this same type of claim arising under Rhode Island law would be enforced by that State's courts," this Court held that Rhode Island's state courts were courts of competent jurisdiction and that they could not decline to hear the suit merely because of its federal nature. *Id.* at 394. Nothing in *Testa* suggests, however, that specialized state courts would have been required to entertain suits under the Emergency Price Control Act if that law had not specified that such claims must be brought in a court "of competent jurisdiction." Cf. *Howlett* v. *Rose*, 496 U.S. 356, 372 (1990) ("When a state court refuses jurisdiction because of a neutral state rule regarding the administration of the courts, [this Court] must act with utmost caution before deciding that it is obligated to entertain the claim."); *id.* at 372-375.

sue and be sued only in a court that is *otherwise* vested with jurisdiction over a particular case. Yet the court of appeals held that the present suit could be heard in federal district court even though respondents had identified no independent basis for district-court jurisdiction apart from the sue-and-be-sued clause itself.

b. The conclusion that Fannie Mae's charter does not itself create federal jurisdiction is reinforced by Congress's addition, in 1974, of a provision specifying that Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." 12 U.S.C. 1717(a)(2)(B). That provision is most naturally read to refer to both personal and subject-matter jurisdiction. See 28 U.S.C. 1332(c)(1) (diversity and removal jurisdiction based on corporate citizenship); accord 28 U.S.C. 1332(c) (1970). As Judge Stein noted, however, "Fannie Mae would have no use for diversity jurisdiction if it could enter the federal courts pursuant to its sue-and-be-sued clause." Pet. App. 39a. When it added that language, moreover, Congress did not make a similar change to Ginnie Mae's charter. It is reasonable to infer that Congress did not view such a change as necessary because Ginnie Mae, unlike Fannie Mae, already "had plenary access to the federal courts as an agency of the federal government." *Ibid.*

The court of appeals suggested (Pet. App. 19a-20a) that Congress was addressing only personal jurisdiction, seeking to ensure that Fannie Mae would still be subject to general jurisdiction in the District of Columbia even if it moved its headquarters to the D.C. suburbs. The court stated (*id.* at 20a-21a) that, if Congress had intended to affect Fannie Mae's status for

purposes of diversity jurisdiction, it would have used the word "citizen" in 12 U.S.C. 1717(a)(2)(B) instead of defining Fannie Mae as "a District of Columbia corporation." But the diversity statute provides that "a corporation shall be deemed to be a citizen of every State * * * by which it has been incorporated." 28 U.S.C. 1332(c)(1). Describing Fannie Mae as a District of Columbia corporation therefore affects both personal and subject-matter jurisdiction. That Congress enacted Section 1717(a)(2)(B) to allow Fannie Mae to move to the D.C. suburbs without a change in jurisdiction (see Pet. App. 20a; Supp. Br. in Opp. 10-11) does not advance respondents' argument. That congressional purpose is consistent with the government's interpretation of Section 1717(a)(2)(B) as providing that Fannie Mae is a citizen of Washington, D.C., for purposes of both personal and subject-matter jurisdiction.

B. There Is No Persuasive Reason To Reject The Most Natural Reading Of Fannie Mae's Charter

1. a. In construing Fannie Mae's sue-and-be-sued clause as a font of subject-matter jurisdiction, the court of appeals relied primarily on what it described as a "clear rule" articulated in *Red Cross*: that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." Pet. App. 5a (quoting *Red Cross*, 505 U.S. at 255). The court also noted that, until 1954, Fannie Mae's charter had contained language functionally identical to the language held to be jurisdiction-creating in *Red Cross*. *Id.* at 8a (explaining that the pre-1954 statute authorized Fannie Mae to "sue and be sued, complain and defend, in any court of law or equity, State or Feder-

al") (emphasis and citation omitted). The court concluded that, when Congress amended that language to its present form, "[t]here is no indication that Congress intended to eliminate federal question jurisdiction in 1954 by replacing the phrase 'court of law or equity' with the phrase 'court of competent jurisdiction.'" *Id.* at 9a.

The court of appeals' analysis is unpersuasive. In holding that a sue-and-be-sued clause "*may* be read to confer federal court jurisdiction if * * * it specifically mentions the federal courts," 505 U.S. at 255 (emphasis added), the Court in *Red Cross* did not suggest that an express reference to federal courts in such a clause will *always* carry that meaning. See *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust* v. *Raines*, 534 F.3d 779, 796 (D.C. Cir. 2008) (Brown, J., concurring in the judgment) (discussing this language in *Red Cross*). A hypothetical clause providing that "Fannie Mae may sue and be sued in federal court *only if* another statute independently confers subject-matter jurisdiction," for example, could not plausibly be read as an independent jurisdictional grant, even though it specifically mentions federal courts. See *id.* at 795. Rather, the pertinent language in *Red Cross* simply makes clear that "mentioning federal courts is necessary, but not always sufficient, to confer jurisdiction." *Ibid.*

The holding of *Red Cross* thus is best understood as a "default rule" under which a sue-and-be-sued clause may be read to confer jurisdiction under certain circumstances, not a "magic-words test" that applies whenever "the word 'federal'" appears. Pet. App. 25a (Stein, J., dissenting). Rather than treating the mere mention of federal courts as dispositive, the

Court in *Red Cross* relied heavily on the fact that the sue-and-be-sued clause at issue there was "in all relevant respects identical to one on which [the Court had] based a holding of federal jurisdiction" in *D'Oench, Duhme*. *Red Cross*, 505 U.S. at 257. Fannie Mae's sue-and-be-sued clause is not "in all relevant respects identical" to the clauses at issue in *Red Cross* and *D'Oench, Duhme*, because it authorizes suit only in courts "of competent jurisdiction."

The Court in *Red Cross* also noted that Congress had amended the Red Cross's charter to its present form in 1947, five years after the ruling in *D'Oench, Duhme*. 505 U.S. at 260. The Court viewed that sequence of events as "indicat[ing] that Congress may well have relied on that holding to infer that amendment of the Red Cross Charter's 'sue and be sued' provision to make it identical to the [one construed in *D'Oench, Duhme*] would suffice to confer federal jurisdiction." *Ibid.* No similar inference can be drawn in this case. To the contrary, in 1954, Congress amended Fannie Mae's sue-and-be-sued clause by *eliminating* language identical to that construed in *D'Oench, Duhme* ("any court of law or equity, State or Federal"), 315 U.S. at 455 (citation omitted), and replacing it with substantively different language ("any court of competent jurisdiction, State or Federal"), Housing Act of 1954, § 201 [§ 309(a)], 68 Stat. 620.

b. As the court of appeals observed, the legislative history is largely "silen[t]" about Congress's reasons for the 1954 amendment to Fannie Mae's sue-and-be-sued clause. Pet. App. 10a. From that silence, the court inferred that, "[g]iven the important practical effect of eliminating federal question jurisdiction under Fannie Mae's sue-and-be-sued clause, we should expect the

House or Senate to have said something if they intended a change of that sort." *Ibid.* The court failed, however, to grapple with the fact that the 1954 change to the sue-and-be-sued clause was part of a larger statute that fundamentally transformed Fannie Mae's relationship to the federal government by converting it to a mixed-ownership corporation and providing "for the eventual substitution of private capital for Government investment in its secondary market operations." H.R. Rep. No. 1429, 83d Cong., 2d Sess. 18 (1954); see Pet. App. 34a (Stein, J., dissenting).

During the period from 1938 until 1954, when Fannie Mae was wholly owned by the federal government (see p. 3, *supra*), 28 U.S.C. 1349 (and its statutory predecessor) conferred federal jurisdiction over suits by and against the corporation. Assuming that the pre-1954 version of the sue-and-be-sued clause was a grant of federal jurisdiction over suits brought by or against Fannie Mae, the practical effect of that clause was simply to duplicate the conferral of jurisdiction that Section 1349 then provided. After Congress adopted the present sue-and-be-sued language as part of the 1954 amendments, the government's ownership of Fannie Mae continued for a time to exceed one-half, and Section 1349 therefore continued to provide an independent source of federal jurisdiction for suits by and against the corporation. See Pet. App. 36a (Stein, J., dissenting). Congress expected and intended, however, that majority ownership of Fannie Mae would eventually pass to private hands. See *ibid.*

Under the general rule established by Section 1349, that change in ownership would mean that suits involving Fannie Mae could thenceforth be brought in federal court only if some independent ground of fed-

eral jurisdiction existed. The absence of legislative history specifically noting that jurisdictional consequence of Fannie Mae's anticipated privatization provides no basis for declining to give the phrase "of competent jurisdiction" its natural meaning. Construing the contemporaneous change to the sue-and-be-sued clause so that Fannie Mae would continue to be governed by the jurisdictional rule that applies to federally chartered corporations generally, see 28 U.S.C. 1349, is wholly consistent with the overall thrust of the 1954 amendments. See Pet. App. 37a (Stein, J., dissenting) (explaining that the 1954 Congress intended "to place the government and Fannie Mae on paths that would ultimately diverge," and that "[t]he amendment to Fannie Mae's sue-and-be-sued clause was part and parcel of this overarching intendment").

c. Until 1954, Fannie Mae was authorized "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." See p. 3, *supra*. In the view of the court of appeals, "the most likely explanation" for the 1954 amendment to Fannie Mae's charter was simply to modernize it by eliminating the outdated references to courts of law and equity. Pet. App. 10a. If that had been Congress's sole objective, however, it could simply have deleted the words "of law or equity" and left the sue-and-be-sued clause otherwise unchanged. The desire to modernize the provision by removing anachronistic language does not explain Congress's simultaneous addition of the phrase "of competent jurisdiction"—a phrase that "seem[s] to look to outside sources of jurisdictional authority." *Sanders*, 430 U.S. at 106 n.6.

d. The same 1954 statute that amended Fannie Mae's charter, see Housing Act of 1954, § 201 [§ 309(a)],

68 Stat. 620, also amended the sue-and-be-sued clause of the Federal Savings and Loan Insurance Corporation (FSLIC) and added a sue-and-be-sued clause for the Home Loan Bank Board (Board). Before 1954, the FSLIC's sue-and-be-sued clause was identical to Fannie Mae's, authorizing the FSLIC "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." National Housing Act, Tit. IV, § 402(c)(4), 48 Stat. 1256. In the Housing Act of 1954, Congress amended the clause to authorize the FSLIC "[t]o sue and be sued, complain and defend, in any court of competent jurisdiction in the United States or its Territories or possessions or the Commonwealth of Puerto Rico." Tit. V, § 501(1), 68 Stat. 633. That amendment added the phrase "of competent jurisdiction" while deleting the prior explicit reference to "Federal" courts. The 1954 statute likewise authorized the Board "to sue and be sued, complain and defend in any court of competent jurisdiction in the United States or its territories or possessions or the Commonwealth of Puerto Rico." § 503(2), 68 Stat. 635. The court of appeals inferred that, if Congress had intended to "eliminate federal question jurisdiction from [Fannie Mae's] sue-and-be-sued clause," it would have used the same language as it did for the FSLIC. Pet. App. 12a; see Supp. Br. in Opp. 8.

That inference is unsound. The 1954 Congress broadened the range of courts in which the FSLIC could sue and be sued to include courts in Puerto Rico and U.S. territories and possessions. Housing Act of 1954, § 501(1), 68 Stat. 633. Since some of those courts are neither "State" nor "Federal," deletion of the phrase "State or Federal" was a natural complement to that change. Congress's simultaneous enact-

ment of a virtually identical sue-and-be-sued clause for the Board, which likewise referred to courts in United States "territories or possessions or the Commonwealth of Puerto Rico," *id.* § 503(2), 68 Stat. 635, but did not specifically mention "Federal" courts, supports that understanding. In any event, the fact that Congress could have used alternative language to make clear that Fannie Mae's sue-and-be-sued clause is not an independent grant of federal jurisdiction provides no sound basis for declining to give the phrase "court of competent jurisdiction" its most natural meaning.

Indeed, the 1954 amendment to the FSLIC's sue-and-be-sued clause substantially undermines another aspect of the court of appeals' reasoning. As one ground for rejecting petitioners' argument, the court surmised that, if the 1954 Congress had intended to divest Fannie Mae's sue-and-be-sued clause of its prior character as an independent grant of federal jurisdiction, the relevant committee reports would have referred specifically to that intent. See Pet. App. 9a-10a. Yet the court recognized that the 1954 statute had precisely that effect with respect to the FSLIC's sue-and-be-sued clause, despite the apparent absence of any legislative history referring to that change.

2. In their supplemental brief in opposition filed at the petition stage, respondents set forth additional arguments in support of their contention that Fannie Mae's charter vests federal district courts with original jurisdiction over suits by and against Fannie Mae. Those arguments do not justify departing from the most natural reading of Fannie Mae's charter.

a. Respondents contend (Supp. Br. in Opp. 6) that petitioners' reading of Fannie Mae's charter conflicts

with this Court's decision in *Breuer* v. *Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003). The question in *Breuer* concerned the proper interpretation of 29 U.S.C. 216(b), which provides that a suit under the FLSA "may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction." See 538 U.S. at 693. Pursuant to 28 U.S.C. 1441, an employer had removed an FLSA suit brought against it by a former employee. See *Breuer*, 538 U.S. at 693-694. The employee argued that 29 U.S.C. 216(b), by providing that an FLSA action "may be maintained" in any state court of competent jurisdiction, established "an express exception to the general authority of removal under § 1441(a)." *Id.* at 694.

The Court rejected that argument. It observed that "Breuer could have begun his action in the [d]istrict [c]ourt" because "[t]he FLSA provides that an action 'may be maintained . . . in any Federal or State court of competent jurisdiction,'" 29 U.S.C. 216(b), "and the district courts would in any event have original jurisdiction over FLSA claims under 28 U.S.C. § 1331, as 'arising under the Constitution, laws or treaties of the United States,' and § 1337(a), as 'arising under any Act of Congress regulating commerce.'" *Breuer*, 538 U.S. at 694. The Court explained that "[r]emoval of FLSA actions is * * * prohibited under § 1441(a) only if Congress expressly provide[s] as much," and it concluded that Section 216(b) does not expressly prohibit removal. *Ibid.*

The Court's decision in *Breuer* has no bearing on the proper interpretation of Fannie Mae's sue-and-be-sued clause, and the Court in *Breuer* did not discuss its distinct precedents addressing various formula-

tions used in sue-and-be-sued clauses of federally created entities. Moreover, because Breuer's suit arose under the FSLA, the action could have been initiated in federal court under 28 U.S.C. 1331 and/or 1337. *Breuer*, 538 U.S. at 694. The Court therefore had no occasion to decide whether the FLSA provision stating that suit could be maintained against an employer "in any Federal or State court of competent jurisdiction," 29 U.S.C. 216(b), itself provided the district courts with subject-matter jurisdiction.[3]

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[3] The brief for the United States in *Breuer* stated that 29 U.S.C. 216(b) "confers jurisdiction on federal courts over FLSA claims," U.S. Amicus Br. at 5, *Breuer*, *supra* (No. 02-337) (citing *Williams* v. *Jacksonville Terminal Co.*, 315 U.S. 386, 390 & n.3 (1942)), and further stated that, "[m]oreover, because the FLSA is an Act of Congress regulating commerce, federal courts ha[d] jurisdiction" under Sections 1331 and 1337, *ibid*; see also U.S. Amicus Br. at 2-3, *Breuer*, *supra* (No. 02-337). In *Williams*, this Court stated that jurisdiction of FLSA actions "was conferred by" 28 U.S.C. 41(8) (1940), the predecessor to 28 U.S.C. 1337, "and by § 16(b) of the [FLSA], 29 U.S.C. § 216(b)." 315 U.S. at 390. Section 216(b) at the time provided that an action could be maintained against an employer "in any court of competent jurisdiction," without any specific mention of federal courts.

It is unclear whether the Court in *Williams* meant that Section 216(b) constituted a grant of jurisdiction independent of what is now 28 U.S.C. 1337, or rather that Section 216(b) effectively invoked the existing grant of jurisdiction in what is now 28 U.S.C. 1337. See *Abbey* v. *United States*, 745 F.3d 1363, 1371 (Fed. Cir. 2014) (jurisdictional language in 29 U.S.C. 216(b) "require[s] one to look elsewhere to find out what court, if any, has jurisdiction") (brackets in original) (quoting *Zumerling* v. *Devine*, 769 F.2d 745, 749 (Fed. Cir. 1985)). Nor did the United States' brief in *Breuer* analyze that question beyond the statement quoted above. Furthermore, in contrast to Fannie Mae's charter, Section 216(b) is a provision that creates a cause of action against employers, not a provision that defines the general powers of a federally chartered

b. Respondents contend (Supp. Br. in Opp. 7-8) that two pre-1954 court of appeals decisions—*Ferguson* v. *Union National Bank of Clarksbury*, 126 F.2d 753 (4th Cir. 1942), and *George H. Evans & Co.* v. *United States*, 169 F.2d 500 (3d Cir. 1948)—would have alerted the 1954 Congress that language authorizing Fannie Mae to sue and be sued "in any court of competent jurisdiction, State or Federal," 12 U.S.C. 1723a(a), vested federal district courts with subject-matter jurisdiction over all suits involving Fannie Mae. Respondents' reliance on those decisions is misplaced.

In the 1940s, as today, the Tucker Act, 28 U.S.C. 1491, authorized a specialized court (then called the Court of Claims) to adjudicate various monetary claims against the United States, while giving the federal district courts concurrent jurisdiction over all such claims that did not exceed $10,000. Compare 28 U.S.C. 41(20) (1940), with 28 U.S.C. 1346(a)(2). The court in *Ferguson* held that a breach-of-contract suit against the Federal Housing Administrator could be brought in federal district court even though the plaintiff sought more than $10,000. 126 F.2d at 756-757. Relying on 12 U.S.C. 1702 (1940), which authorized the Administrator to "sue and be sued in any court of competent jurisdiction, State or Federal," the court held that "the jurisdiction of a United States [d]istrict [c]ourt to entertain a suit against governmental agencies and corporations is not limited by the Tucker Act." *Ferguson*, 126 F.2d at 756-757 (citation omitted). The court of appeals in *George H. Evans & Co.* likewise held that the plaintiff could bring suit against federal housing agencies in federal district

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entity, including its capacity to sue or be sued. Cf. *Red Cross*, 505 U.S. at 268-270 (Scalia, J., dissenting).

court even though the amount in controversy exceeded $10,000. 169 F.2d at 502.

The core holding of those decisions—*i.e.*, that the Tucker Act's $10,000 limit does not apply to suits brought against federal agencies pursuant to a sue-and-be-sued clause—is entirely consistent with the position taken by petitioners and the government in this case. There is no dispute that a suit against Fannie Mae for more than $10,000 can be brought in (or removed to) federal district court if an independent ground of subject-matter jurisdiction exists, *e.g.*, if the plaintiff asserts a federal-law cause of action. Respondents read the decisions in *Ferguson* and *George H. Evans & Co.* to endorse the further proposition that the relevant sue-and-be-sued clause itself vested the district court with subject-matter jurisdiction. But it is unclear whether the courts of appeals allowed the suits to proceed on that basis, or whether they believed (for example) that the plaintiffs' breach-of-contract claims arose under federal law. Cf. *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715, 726 (1979) ("This Court has consistently held that federal law governs questions involving the rights of the United States arising under nationwide federal programs."). In any event, respondents identify no reason to believe that the 1954 Congress was aware of those two decisions or intended to incorporate those courts' approach when it amended the sue-and-be-sued clause that governs a *different* federal entity.

c. Citing *Blackmar* v. *Guerre*, 342 U.S. 512 (1952), respondents contend (Supp. Br. in Opp. 9) that the 1954 Congress "would have understood the phrase 'court of competent jurisdiction' as confirming the requirement of *personal* jurisdiction." That argument is not

persuasive. In *Blackmar*, the petitioner had filed suit against the Civil Service Commission in federal district court in Louisiana. The Court explained that the Civil Service Commission "is not a corporate entity which Congress has authorized to be sued." *Blackmar*, 342 U.S. at 515. The Court held that, even assuming the Commission's actions were reviewable under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, the only "court of competent jurisdiction" to hear the claim would be one that had personal jurisdiction over the Commissioners, which the federal district court in Louisiana did not. *Blackmar*, 342 U.S. at 515-516.

Respondents contend (Supp. Br. in Opp. 9) that, because *Blackmar* was decided shortly before the 1954 amendment to Fannie Mae's charter, Congress "surely would have understood" that the phrase it was adding to Fannie Mae's charter referred to personal jurisdiction. *Blackmar* reinforces what would in any event be the natural inference that, in an action invoking Fannie Mae's sue-and-be-sued clause, the plaintiff must identify another provision of law that vests the district court with personal jurisdiction over the defendant. But *Blackmar* does not support respondents' contention that the phrase "of competent jurisdiction" in Fannie Mae's sue-and-be-sued clause refers *only* to personal jurisdiction. Indeed, the APA provision cited in *Blackmar* (5 U.S.C. 1009 (1952)) was the statutory predecessor to current 5 U.S.C. 703, which the Court in *Sanders* described, with specific reference to "subject-matter jurisdiction," as "seem[ing] to look to outside sources of jurisdictional authority." *Sanders*, 430 U.S. at 106 n.6.

d. Respondents contend (Supp. Br. in Opp. 11-12) that Congress could not have intended to give Fannie Mae less access to federal courts than Freddie Mac, which may "sue and be sued, complain and defend, in any State, Federal, or other court." 12 U.S.C. 1452(c)(7). But quite apart from the differences between the two entities' sue-and-be-sued clauses, Congress has enacted additional provisions whose practical effect is to confer federal jurisdiction over all suits involving Freddie Mac. Specifically, 12 U.S.C. 1452(f) provides that Freddie Mac "shall be deemed to be an agency included in sections 1345 and 1442 of * * * title 28"; that all civil actions involving Freddic Mac are "deemed to arise under the laws of the United States"; and that Freddie Mac may remove suits to federal court. Congress has not enacted comparable statutory provisions with respect to Fannie Mae.

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The most natural reading of Congress's authorization for Fannie Mae to sue and be sued "in any court of competent jurisdiction, State or Federal," is that the court in which the suit is filed must have some independent authorization to exercise subject-matter jurisdiction over the suit. Neither respondents nor the court of appeals has offered any persuasive reason to reject that natural reading of the statutory text.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

EDWIN S. KNEEDLER*
Deputy Solicitor General
BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
ANN O'CONNELL
Assistant to the Solicitor General
MARK B. STERN
ABBY C. WRIGHT
Attorneys

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* The Acting Solicitor General is recused in this case.